



Senate

General Assembly

File No. 431

February Session, 2022

Substitute Senate Bill No. 420

Senate, April 12, 2022

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE STATE WORKFORCE AND
DISCRIMINATION AND RETALIATION IN THE WORKPLACE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective January 1, 2023*) As used in this section and
2 section 2 of this act:

3 (1) "Manager" means any managerial employee as defined in section
4 5-270 of the general statutes;

5 (2) "Covered employee" means any employee, as defined in section 5-
6 270 of the general statutes, other than a manager;

7 (3) "State employer" means any employer as defined in section 5-270
8 of the general statutes; and

9 (4) "Discrimination" means any adverse action with respect to any
10 employee taken in whole or in part due to the race, color, religious creed,

11 sex, gender identity or expression, marital status, age, national origin,
12 ancestry, status as a veteran, intellectual disability, mental disability,
13 learning disability or physical disability.

14 Sec. 2. (NEW) (*Effective January 1, 2023*) (a) Each state employer shall
15 adopt a zero-tolerance policy for using managerial authority for
16 discrimination or retaliation against those who complain of
17 discrimination. Such policy shall: (1) Specifically forbid any manager
18 from retaliating or discriminating against an employee who complains
19 of discrimination; (2) include performance and other sanctions against
20 managers who dissuade or seek to dissuade employees from filing such
21 complaints; and (3) include performance and other sanctions against
22 managerial authorities who fail to objectively and fully investigate such
23 complaints consistent with identified procedures following an incident,
24 including, but not limited to, notifications to the complainant regarding
25 the status and outcome of the complaint investigation.

26 (b) Each state employer shall ensure that it is safe for employees to
27 formally or informally raise any complaint concerning the use of
28 managerial authority in violation of the provisions of subsection (a) of
29 this section. No state employer shall take or threaten to take any
30 personnel action, or otherwise discriminate against, any employee
31 because such employee has formally or informally raised such
32 complaint.

33 (c) Any state employer who takes any action against a covered
34 employee in violation of this section shall be deemed to have committed
35 a discriminatory employment practice, as defined in section 46a-60 of
36 the general statutes, and to be in violation of section 31-51m of the
37 general statutes. Any employee who brings any action under any of
38 these sections may recover, in addition to all other damages available
39 under such section, treble damages for any employment losses.

40 (d) Discharge or other termination of any employee in violation of
41 this section shall be conclusively presumed to create irreparable harm
42 for purposes of any temporary or permanent injunction action that may
43 be brought to redress such violation, and it shall be irrebuttably

44 presumed that there is not adequate remedy at law. The doctrine of
45 exhaustion of administrative remedies shall not apply in any action to
46 redress a discharge or other termination of employment. Any required
47 initial notice for any action under this section shall include the
48 Connecticut Commission on Human Rights and Opportunities and the
49 commission may intervene as a matter of right in any such proceeding.

50 Sec. 3. (NEW) (*Effective January 1, 2023*) (a) There is established an
51 Office of the Racial Justice Ombudsperson that shall: (1) Establish
52 common working definitions for all key terms and descriptors to lay the
53 foundation for the work; (2) institute a diverse slate initiative that
54 requires Black or African American and Hispanic or Latinx not simply
55 be among those considered, but prioritized for interviews for roles or
56 positions using an external or internal hiring or promotional process
57 that would require the hiring manager, or entity, to screen and interview
58 all candidates using a standard antiracist screening and interview
59 protocol that scores applicant answers; (3) create a structure or
60 mechanism for the delivery of antiracism and bias trainings to all state
61 employees, managers, state vendors and consultants; (4) track
62 participation in such trainings in a manner that facilitates
63 disaggregation of the data by position or title, length of state service and
64 demographic profile; (5) design a culture and climate survey to assess
65 the physical, racial, linguistic and cultural safety of all persons in an
66 agency, and the extent to which each person feels valued and believes
67 the agency's policies and practices are equitable and just; (6) submit a
68 theory of action and plan for making constant progress towards
69 eliminating systemic racism in state government, and implementing
70 strategies and structures to maintain a workplace that (A) affords
71 physical, racial, linguistic and cultural safety, and (B) privileges the
72 ability of all employees to challenge racism and aggressions; (7) ensure
73 that all employees get a full and fair hearing of grievances, without fear
74 of retaliation, and ensure fair and racially just outcomes; (8) foster a
75 workplace where managerial authorities are accountable to lead and
76 model antiracist practices and make changes needed to ensure an
77 antiracist, equitable workplace for all; (9) track and review the
78 performance review process and protocols, as well as performance

79 reviews, to identify discrepancies between white workers and black and
 80 brown workers in terms of education, time in position, job education
 81 provided, opportunities for professional development and growth to
 82 immediately create remediation plans to address racial disparities; (10)
 83 analyze and recommend solutions to hiring, training and promotion
 84 practices which have resulted in ten thousand-dollar-pay differentials
 85 between black and white workers; (11) focus on specific and actionable
 86 steps that those with supervisory or managerial authority can
 87 implement within their workplace to eliminate their unconscious or
 88 conscious racial biases; and (12) review complaints and discipline
 89 administered and recommend remediation plans where evidence of
 90 disparate discipline, responses to complaints and manner of
 91 investigation differed by employee race.

92 (b) (1) The Racial Justice Ombudsperson shall (A) be appointed by a
 93 mutual agreement of the State Employees Bargaining Agent Coalition
 94 Racial Justice Committee and the Governor, and (B) be an expert in
 95 matters relating to the history, root causes, manifestations and
 96 persistent effects of racism.

97 (2) The Racial Justice Ombudsperson shall report to a joint committee
 98 consisting of (A) the State Employees Bargaining Agent Coalition Racial
 99 Justice Committee, (B) the Governor, or the Governor's designee, and
 100 (C) the joint standing committee of the General Assembly having
 101 cognizance of matters relating to public employees.

This act shall take effect as follows and shall amend the following sections:		
Section 1	January 1, 2023	New section
Sec. 2	January 1, 2023	New section
Sec. 3	January 1, 2023	New section

Statement of Legislative Commissioners:

In Section 2(b), "assure" was changed to "ensure" for accuracy, in Section 2(c), "triple damages" was changed to "treble damages" for accuracy, and in Section 3(a)(7), "assure" was changed to "ensure" in two places for accuracy.

LAB *Joint Favorable Subst. -LCO*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Human Rights & Opportunities, Com.	GF - Cost	75,051	75,051
Office of Racial Justice Ombudsperson	GF - Cost	Up to 317,599	Up to 302,379
State Comptroller - Fringe Benefits ¹	GF - Cost	Up to 152,972	Up to 152,972
Human Rights & Opportunities, Com.	GF - Revenue Loss	1.1 million	1.1 million

Note: GF=General Fund

Municipal Impact: None

Explanation

Sections 1 and 2 require most branches and agencies of the state government to adopt a zero-tolerance policy for using managerial authority to discriminate or retaliate against employees who make discrimination complaints.

The bill creates a new discriminatory practice process for state employees, allowing them to directly file discrimination cases in court instead of through the Commission on Human Rights and Opportunities (CHRO). Currently, CHRO is given the right to intervene in these cases as they are filed in court and the agency does this frequently given it is the agency's responsibility to enforce and administer antidiscrimination laws. Under the bill, these discrimination

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 40.53% of payroll in FY 23.

cases would go directly to court instead of to CHRO. This would result in costs associated with monitoring and litigating these cases in court. In FY 21, there were 184 complaints filed against state agencies at CHRO; 223 in FY 20; and 186 in FY 19. Assuming half of those complaints are filed directly in court instead of at CHRO, there would be a significant number of cases litigated in court versus cases that could be handled through CHRO.

Additionally, the bill offers treble damages for state employees, and encourages the filing of additional cases under certain circumstances. This is anticipated to result in costs to CHRO of \$75,051, plus fringe benefits of \$30,418, to hire an additional Human Rights Attorney I position to handle the additional litigation caseload associated under the bill. It could also result in additional costs to the state to the extent additional damages are awarded.

Currently, CHRO receives approximately \$1.1 million in annual revenue from the federal Equal Employment Opportunity Commission (EEOC) as part of CHRO's contract with EEOC to investigate discrimination complaints. It is expected that exempting state employees from CHRO's process would violate the terms of this contract, and result in a General Fund revenue loss in an amount of this contract, approximately \$1.1 million, annually.

Section 3 establishes an Office of Racial Justice Ombudsperson by January 1, 2023. While the bill does not explicitly authorize the ombudsperson to hire staff, the Office of Racial Justice Ombudsperson may need up to three staff members in addition to the Ombudsperson which will result in an estimated cost of up to \$440,153 in FY 23 and \$424,933 in FY 24. This consists of a total salary cost of \$302,379 in FY 23 and \$302,379 in FY 24, and fringe benefit cost of \$122,554 in FY 23 and \$122,554 in FY 24, for an Ombudsman and three additional staff (one Research Analyst, one Human Rights Attorney 2, and one Administrative Assistant). This also includes a one-time cost of \$15,220 for equipment in FY 23.

The Ombudsperson must report to legislative committees which is

not anticipated to have a fiscal impact.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation, the amount of damages awarded to state employees, and additional staff and equipment for the Office of Racial Justice Ombudsperson.

Sources: Core-CT Financial Accounting System

OLR Bill Analysis**sSB 420*****AN ACT CONCERNING THE STATE WORKFORCE AND DISCRIMINATION AND RETALIATION IN THE WORKPLACE.*****SUMMARY**

This bill requires most branches and agencies of the state government to adopt a zero-tolerance policy for using managerial authority to discriminate or retaliate against employees who complain of discrimination. The bill (1) requires each state employer to ensure that it is safe for employees to make formal or informal complaints and (2) makes any violation of the bill a discriminatory employment practice as defined in state law. Existing state law prohibits the state as an employer from discrimination or retaliation in the workplace and authorizes the Commission on Human Rights and Opportunities (CHRO) to investigate complaints.

The bill also establishes the Office of the Racial Justice Ombudsperson (ORJO). It requires the ombudsperson to, among other things, (1) institute a diverse slate initiative that requires Black or African American and Hispanic or Latinx job candidates to be prioritized for interviews using a hiring or promotional process that meets certain requirements and (2) create a mechanism to deliver antiracism and bias trainings to all state employees, managers, state vendors, and consultants. Under existing law, unchanged by the bill, CHRO oversees the affirmative action hiring enforcement for all state agencies.

EFFECTIVE DATE: January 1, 2023

§§ 1 & 2 — ZERO-TOLERANCE POLICY FOR DISCRIMINATION AND RETALIATION

Under existing law, unchanged by the bill, it is a discriminatory

employment practice to discriminate against anyone in compensation or employment terms, conditions, or privileges, or to bar or terminate them from employment, due to race; color; religious creed; age; sex; gender identity or expression; marital status; national origin; ancestry; present or past history of mental disability, intellectual disability, learning disability, or physical disability, including blindness; or status as a veteran. There is also a similar provision in state law banning employment discrimination based on sexual orientation.

Under the bill, “discrimination” means any adverse action taken against an employee in whole or in part due to the race, color, religious creed, sex, gender identity or expression, marital status, age, national origin, ancestry, status as a veteran, intellectual disability, mental disability, learning disability, or physical disability. (This definition does not include sexual orientation.) “Manager” is any managerial employee as defined in state employee collective bargaining law.

This bill requires all branches and agencies of state government considered an employer under the state employee collective bargaining law to adopt a zero-tolerance policy for using managerial authority to discriminate or retaliate against employees who make discrimination complaints. This covers the executive and judicial branches, as well as the constituent units of higher education, quasi-public agencies, and any related boards, departments, or commissions. It does not include the legislative branch, State Board of Labor Relations, or State Board of Mediation and Arbitration.

The zero-tolerance policy must:

1. forbid any manager from taking or threatening to take any personnel action, retaliating, or discriminating against an employee who makes a discrimination complaint and
2. include performance and other sanctions against managers who
 - (a) dissuade or seek to dissuade employees from filing discrimination complaints or
 - (b) fail to investigate complaints objectively and fully, consistent with identified procedures after

an incident, including notifying the complainant about the investigation's status and outcome.

Each state employer must ensure employees that it is safe for them to formally or informally complain about managerial authority in violation of the bill.

Enforcement

Any state employer who takes any action against a covered employee in violation of the bill must be deemed to have committed a discriminatory employment practice as defined in CHRO law and to be in violation of the state's anti-retaliation employment law. Any employee who brings any action under any of these existing laws may recover, in addition to all other damages available, treble damages for any employment losses. (Presumably this refers to bringing civil action in Superior Court, but the bill does not say.)

Under the bill, terminating an employee in violation of the bill must be conclusively presumed to create irreparable harm for purposes of any temporary or permanent injunction that may be brought to redress the violation. And there must be an irrebuttable presumption that there is not adequate remedy at law. (The bill does not provide a process to determine whether there has been a violation of its provisions and it does not name the person or agency that would make this determination. The bill expressly states that a violation will be conclusively presumed to create irreparable harm, but it does not state more specifically what situation the presumption can be applied in.)

Under existing law, a court will generally not order an injunction unless the party accused of the violation is notified and given the opportunity to respond. But the law also allows a complainant to prove to a court from the specific facts shown by affidavit or by verified complaint that irreparable loss or damage will result to the complainant before the matter can be heard and the injunction must be granted immediately.

Additionally, under the bill the doctrine of exhaustion of

administrative remedies must not apply in any action to redress a discharge or other termination of employment.

Current law authorizes CHRO to investigate discrimination complaints and discriminatory employment practices in the state workforce (CGS Chap. 814c).

§ 3 — RACIAL JUSTICE OMBUDSPERSON

Beginning January 1, 2023, the bill establishes the ORJO and gives the office several duties related to hiring and training state employees. The bill does not specify how the ORJO authority interacts with the existing statutory authority of (1) the Department of Administrative Services regarding state hiring practices and (2) CHRO regarding discrimination investigations.

Under the bill, the office must:

1. establish working definitions for all key terms and descriptors to lay the foundation for its work;
2. institute a diverse slate initiative that requires Black or African American and Hispanic or Latinx employment candidates to not simply be among those considered, but prioritized for interviews for positions using a hiring or promotional process that would require the hiring manager to screen and interview all candidates using a standard antiracist screening and interview protocol;
3. create a structure or mechanism to (a) deliver antiracism and bias trainings to all state employees, managers, vendors, and consultants and (b) track participation to show disaggregated data by position, length of service, and demographic profile;
4. design a culture and climate survey to (a) assess the physical, racial, linguistic, and cultural safety of everyone in an agency, and (b) the extent to which each person feels valued and believes the agency's policies and practices are equitable and just;
5. submit a theory of action and plan for making constant progress

towards eliminating systemic racism in state government and implementing strategies and structures to maintain a workplace that (a) affords physical, racial, linguistic and cultural safety, and (b) privileges the ability of all employees to challenge racism and aggressions (the bill does not specify to whom the theory of action and plan should be submitted; it is not clear what the term “privileges” means in this context);

6. ensure that all employees get full and fair grievance hearings, without fear of retaliation, and ensure fair and racially just outcomes (the bill does not legally connect the ORJO to any employee hearing process);
7. foster a workplace where managerial authorities are accountable to lead and model antiracist practices and make changes needed to ensure an antiracist, equitable workplace for all;
8. track and review the performance review process and protocols and performance reviews, to identify discrepancies between white workers and black and brown workers in terms of education, time in position, job education provided, opportunities for professional development and growth to immediately create remediation plans to address racial disparities (performance reviews are generally confidential and the bill does not expressly give ORJO access to them);
9. analyze and recommend solutions to hiring, training, and promotion practices which have resulted in \$10,000 pay differentials between black and white workers;
10. focus on specific and actionable steps that those with supervisory or managerial authority can implement within their workplace to eliminate their unconscious or conscious racial biases; and
11. review complaints and administered discipline, and recommend remediation plans where evidence of disparate discipline, responses to complaints, and manner of investigation differed by

employees' race.

The ombudsperson must (1) be appointed by a mutual agreement of the State Employees Bargaining Agent Coalition (SEBAC) Racial Justice Committee and the governor and (2) be an expert in matters relating to the history, root causes, manifestations and persistent effects of racism. The bill does not explicitly authorize the ombudsperson to hire staff or establish deadlines to complete the various tasks in the bill.

The ombudsperson must report to a joint committee consisting of the SEBAC Justice Committee, the governor, or his designee, and the Labor Committee.

COMMITTEE ACTION

Labor and Public Employees Committee

Joint Favorable

Yea 9 Nay 4 (03/24/2022)